IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
March 25, 2013 Session

JOE CHRISTOPHER WATSON v. THE PARENT COMPANY

Appeal from the Chancery Court for Coffee County
No. 08363 L. Craig Johnson, Chancellor

No. M2012-01147-WC-R3-WC - Mailed April 5, 2013
FILED May 8, 2013

In 2007, the employee suffered a work-related back injury, for which he filed a workers' compensation claim. After conservative treatment failed to provide relief, the employee obtained an unauthorized fusion surgery. The parties settled the workers' compensation action in 2009. The settlement provided for "future medical benefits relating to the back injury" of 2007, while precluding future benefits for unauthorized care. In 2011, the employee sought authorization for a second surgery by an authorized surgeon. The employer refused. The trial court ordered the employer to pay for the second surgery, and the employer has appealed. After reviewing the record, we conclude that the employer has appealed an order that is not final and that this Court does not have subject matter jurisdiction to hear this appeal. Thus, this appeal is dismissed.

Tenn. Code Ann. § 50-6-225(e) (2008 & Supp. 2012) Appeal as of Right;
Dismissed For Lack of Subject Matter Jurisdiction

TONY A. CHILDRESS, SP. J., delivered the opinion of the Court, in which CORNELIA A. CLARK, J., and DON R. ASH, SR. J., joined.

Richard R. Clark, Jr., Nashville, Tennessee, for the appellant, The Parent Company.

Eric J. Burch, Manchester, Tennessee, for the appellee, Joe Christopher Watson.

MEMORANDUM OPINION

Factual and Procedural Background

Mr. Joe[1] Christopher Watson ("Employee") began working for The Parent Company ("Employer") on or about June 5, 2006. On May 21, 2007, Employee injured his back in a "work-related accident." On June 27, 2007, Employee saw Dr. George H. Lien, a neurosurgeon, who began conservative treatment and limited Employee to light-duty work. On August 1, 2007, Dr. Lien returned Employee to work without any restrictions and determined that Employee retained no permanent impairment from his injury.

On August 14, 2007, Employee "aggravated" the injury of May 21, 2007 in a "work-related accident." On September 14, 2007, Employer saw Dr. Lien again and complained of worsening back pain. Dr. Lien noted that Employee "may be a candidate for lumbar epidural steroid injections," but "there is nothing to offer him from a surgical standpoint." At about this time, Employer fired Employee. On October 14, 2007, Employee filed a workers' compensation action against Employer seeking recovery for the May 21 and August 14 work injuries.

On October 18, 2007, Employee saw Dr. Robert E. Clendenin, III. Dr. Clendenin administered "lumbar facet injections" on October 30, 2007. Unfortunately, this treatment provided no relief. Dr. Clendenin administered an "epidural steroid injection" on November 16, 2007. This injection also failed to provide relief. Dr. Clendenin determined that Employee had reached maximum medical improvement on December 4, 2007. After a functional capacity evaluation, Dr. Clendenin found "no objective evidence" of permanent impairment, assigned a "0% impairment as per AMA guidelines," and could discern "no objective reason" why Employee could not return to regular work.

By March 6, 2008, Employee began seeking treatment at Howell Allen Clinic in Nashville. Employee saw Dr. Vaughan Allen on March 6th, June 12th, and July 7th. After conservative treatment failed, Dr. Paul McCombs, III, performed a "posterior lumbar interbody fusion with pedicle screw fixation at L5-S1." It is undisputed that the treatment provided by Howell Allen Clinic, including the fusion surgery by Dr. McCombs, was not authorized by Employer.

Unfortunately, the surgery did not provide Employee relief. Additionally, Employee suffered "nerve compromise from what appears to be bony fragments from the fusion" and

[1] According to the transcript of the May 8, 2011 trial, Mr. Watson initially gave his name as "John Christopher Watson."

a "decompressive lumbar laminectomy" was performed. By April 13, 2009, Employee was "doing better."

On December 11, 2009, the parties settled Employee's workers' compensation lawsuit. The Coffee County Chancery Court entered an "Order of Compromise and Settlement" that provided in part:

> Upon the Complaint of JOE C. WATSON and it appearing unto the Court that the parties have agreed among themselves to a full and final settlement of all workers' compensation claims in the amount of . . . $85,000 . . . for a permanent partial disability of . . . 45% to the body as a whole for injuries sustained in the work-related accident on May 21, 2007 and aggravated in the August 14, 2007 work-related accident.
>
> [Employee] was also examined and treated by non-designated and unauthorized physicians. [Employer's] Insurer has [also] settled the subrogation claim of [Employee's] health insurance company, Blue Cross/ Blue Shield, in connection with this matter for the amount of $23,000. [Employer] and its Insurer are not responsible for payment of future medical expense incurred by [Employee] for services rendered by non-designated and unauthorized physicians.
>
> The Court finds that this settlement is fair and reasonable and is consistent with the provisions of the workers' compensation laws of the State of Tennessee.
>
> It is therefore, ORDERED, ADJUDGED and DECREED by the Court, that the above referenced workers' compensation settlement be approved and judgment is hereby entered thereon in accordance with the Workers' Compensation Act of the State of Tennessee upon the payment by the Defendant to the Plaintiff in the amount of EIGHTY-FIVE THOUSAND AND 00/100 ($85,000.00) DOLLARS for a permanent partial disability of forty-five (45%) percent to the body as a whole for the back injury sustained as a result of the May 21, 2007 work-related accident and aggravated in the August 14, 2007 work-related accident. All future medical benefits relating to the back injury sustained as a result of the work-related accident of May 21, 2007 accident and aggravated in the August 14, 2007 work-related accident are to remain open. If future medical treatment is needed, Employee will be provided a panel of physicians pursuant to T.C.A. Section 50-6-204 from which to select a treating physician. Therefore the total amount of this

settlement is EIGHTY-FIVE THOUSAND AND 00/100 ($85,000.00) DOLLARS.

Several months after the settlement, Employee's back condition again worsened. Through counsel, Employee asked Employer to designate a panel of physicians. Employer provided multiple panels, and Employee eventually selected Dr. Brett L. Babat, who is an orthopedic spine surgeon. Dr. Babat initially saw Employee on April 20, 2011, and diagnosed him with "psuedarthrosis." Dr. Babat recommended surgery to repair the condition. Dr. Babat, who testifued by way of deposition, explained that "pseudarthrosis is when a surgeon attempts to perform a fusion of any bone in the body." According to Dr. Babat, Employee "had surgery to try to accomplish a fusion, and the fusion did not take, so to speak. There was no bone growth." Dr. Babat agreed that "if the first fusion would not have been performed, then there would be no need for the second repair of the pseudarthrosis." Dr. Babat recommended a "pseudarthrosis repair" and was willing to perform that surgery himself. Employer, however, did not approve the proposed surgery.

On July 12, 2011, Employee filed a "Complaint for Medical Treatment" with the Coffee County Chancery Court. In this complaint Employee requested that Employer "be required to provide all necessary future treatments for the [Employee's] worker's compensation injury and be sanctioned for failure to do so as previously ordered." Employee also asked that Employer "be required to reimburse [Employee] for all medical treatment paid for by [Employee]." Employee also requested that he be awarded "attorney fees and costs."

At the trial on May 8, 2012, Employee testified in person, and Dr. Babat testified by deposition. The trial court found that "[Employer] is responsible for the future medical benefits relating to the back injuries sustained as a result of the work-related accident of May 21st, 2007, and that this surgery is related to that back injury." On May 17, 2007, the trial court memorialized its ruling in a written order:

> Based upon the pleadings before the Court and the proof presented at trial, the Court finds that:
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> 1. [Employer] shall authorize [Employee's] treatment as recommended by Dr. Bret[t] Babat and all associated charges from said treatment.
>
> 2. The Court finds that [Employer] is responsible for future medical treatment of [Employee], regardless of whether the unauthorized original fusion [surgery] in 2008 caused the need for this new surgery as recommended by Dr.

> Babat. The court finds the recommended surgery is related to [Employee's] work related injury suffered [on May 21, 2007].
>
> 3. [Employee's] attorney shall submit an affidavit of time and expenses associated with the enforcement of [Employee's] right to future medical treatment. [Employer] shall be afforded an opportunity to challenge contents of said time and expenses if needed.

Employer appealed, and the case was referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law. See Tenn. Code Ann. § 50-6-225(e) (2008 & Supp. 2012); Tenn. Sup. Ct. R. 51. Employer contends that the trial court erred in ordering it to pay for the surgery Dr. Babat proposed because the need for the proposed surgery actually arose from the prior unauthorized surgery by Dr. McCombs, not the May 21, 2007 work injury. Employer contends that the 2009 settlement expressly absolved it from all future expenses arising out of the unauthorized fusion surgery. Employee argues that the trial court properly held Employer liable for the proposed surgery by Dr. Babat—an authorized physician. Employee also avers that his lawyer is entitled to recover attorney's fees associated with this matter. The record does not reveal that trial court ever adjudicated the claim for attorney's fees the Employee brought in his complaint. Also, the record does not reflect that the order appealed was certified as final pursuant to Rule 54.02 of the Tennessee Rules of Appellate Procedure.

Standard of Review

Appellate review of workers' compensation cases is governed by Tennessee Code Annotated section 50-6-225(e)(2) (2008 & Supp. 2012), which provides that appellate courts must review the trial court's findings of fact "de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding[s], unless the preponderance of the evidence is otherwise." As the Supreme Court has observed many times, reviewing courts must conduct an in-depth examination of the trial court's factual findings and conclusions. Wilhelm v. Krogers, 235 S.W.3d 122, 126 (Tenn. 2007). When the trial court has seen and heard the witnesses, considerable deference must be afforded the trial court's factual findings. Tryon v. Saturn Corp., 254 S.W.3d 321, 327 (Tenn. 2008). No similar deference need be afforded the trial court's findings based upon documentary evidence such as depositions. Glisson v. Mohon Int'l, Inc./Campbell Ray, 185 S.W.3d 348, 353 (Tenn. 2006). Similarly, reviewing courts afford no presumption of correctness to a trial court's conclusions of law. Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009).

Analysis

Rule 13 of the Tennessee Rules of Appellate Procedure provides that in every appeal the "appellate court shall consider whether the trial court and appellate court have jurisdiction over the subject matter, whether or not presented for review . . . ." Tenn. R. App. P. 13(b). In compliance with the duty imposed upon us by Rule 13(b), we have reviewed the appellate record to determine if this Court has subject matter jurisdiction to hear this appeal. For the reasons stated below, we have determined that we do not have subject matter jurisdiction to hear this appeal.

This Court has not granted permission to appeal. Thus, this appeal has not come before this Court by way of Rule 9 or Rule 10 of the Tennessee Rules of Appellate Procedure. Instead, this appeal has been brought to this Court by way of Rule 3 of the Tennessee Rules of Appellate Procedure, which provides that "[i]n civil actions every *final* judgment entered by a trial court from which an appeal lies to the Supreme Court or Court of Appeals is appealable as of right." Tenn. R. App. P. 3(a) (emphasis added). "Except as otherwise permitted in Rule 9 and in Rule 54.02 Tennessee Rules of Civil Procedure, if . . . multiple claims for relief are involved in an action, any order that adjudicates fewer than all the claims . . . is not enforceable *or appealable* . . . ." Tenn. R. App. P. 3(a) (emphasis added).

In this case, Employee made a claim for attorney's fees and costs in his complaint. The record before this Court, however, does not show that the trial court ever adjudicated that claim,[2] and "an order that fails to address an outstanding claim for attorney's fees is not final." City of Jackson v. Hersh, No. W2008-02360-COA-R3-CV, 2009 WL 2601380 at *4 (Tenn. Ct. App. Aug. 25, 2009). Additionally, the order appealed was not certified as final pursuant to Rule 54.02 of the Tennessee Rules of Civil Procedure.

Permission to appeal has not been granted by this Court, and Employer has appealed an order that was neither certified as final pursuant to Rule 54.02 of the Tennessee Rules of Civil Procedure nor final and appealable as of right pursuant to Rule 3 of the Tennessee Rules of Appellate Procedure. Therefore, this Court does not have subject matter jurisdiction to hear this appeal. See Bayberry Assoc. v. Jones, 783 S.W.2d 553, 559 (Tenn. 1990).

[2] Incidently, the record also does not reflect that the trial court adjudicated Employee's claim that "Employer be required to reimburse [him]for all the medical treatment paid for by [Employee]."

Conclusion

For the reasons stated above, this appeal is dismissed, and this case is remanded to the trial court for further proceedings consistent with opinion. Costs of this appeal are taxed to The Parent Company and its surety, for which execution may issue if necessary.

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TONY A. CHILDRESS, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE

JOE CHRISTOPHER WATSON v. THE PARENT COMPANY

Chancery Court for Coffee County
No. 08363

No. M2012-01147-WC-R3-WC - Filed May 8, 2013

JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by The Parent Company and its surety, for which execution may issue if necessary.

PER CURIAM